Railroad Brakeman Not a Balloonist.—Because Van Fleet, insured as a railroad brakeman, was killed while making an ascent in a balloon, defendant insurance company asserted that in so doing he was following the occupation of an æronaut, and therefore recovery could only lie for the rate fixed for the latter more hazardous occupation. The policy provided that if insured was injured or killed while following any occupation, or in any exposure, or performing acts parallel in hazard to the characteristic acts of any occupation classed by the company as more hazardous than that specified in the application for the policy, recovery therefor should be at the rate fixed for such more hazardous occupation. The Supreme Court of Colorado, in Pacific Mut. Life Ins. Co. of California *v.* Van Fleet, 107 Pacific Reporter, 1087, held that as the only classification made by the insurance company is of occupations, and not of particular acts or exposures, a change of occupation, such as will defeat the policy, must be a permanent change, or a temporary change in all substantial respects a change of occupation, and that the policy is not defeated by the performance of some individual act, or indulging or engaging in a particular exposure, which, as in this case, is of a more hazardous nature than that attending the fixed occupation given by the insured.

Turkeys Taken by Mistake Must Be Placed in Owner's Possession.—While defendant was driving along the highway, in the vicinity of plaintiff's farm, she found a hen turkey and ten chicks in the road, and, believing that they belonged to her flock and were astray, caught them and took them home. Plaintiff, missing his brood, and having heard that defendant had found one, drove over to defendant's farm to make inquiries. She told him that she did not know whether the turkeys belonged to him or not, but that if he said they did he might take them. The turkeys, however, were in the uncut oats, making

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that a negligent person injured by the wrongful act is entitled to redress. Jetter *v.* New York, etc., R. Co., 2 Abb. App. Dec. (N. Y.) 458.

In a headnote opinion by the court of appeals of Georgia, it was decided that the fact that the plaintiff was himself at the time of his injury engaged in an act violative of the penal laws of this state (in this case, gaming) does not preclude his recovery for damages resulting to him from the negligence of another, provided that his unlawful act did not proximately contribute to bringing about his injury. 29 Cyc. 125; Johnson *v.* Rome Ry. & Light Co., 4 Ga. App. 742, 745, 62 S. E. 491; Norris *v.* Litchfield, 35 N. H. 271, 69 Am. Dec. 546; Moone *v.* Smith, 67 S. E. 836.

The decisions in our fertilizer cases in this state might be applied by analogy in such a case as this. It is there held that where statutes require of sellers of commercial manures the observance of certain conditions, under penalty, but do not declare contracts for sale void for nonobservance, the seller may recover on such a contract, although he has failed to conform to the statutory requirements. Niemeyer *v.* Wright, 75 Va. 239, 40 Am. Rep. 720.

it impossible for him to see or capture them. When the oats were cut a few days later, but no turkeys were returned, plaintiff threatened suit. Defendant thereupon took the fowls, one night after dark, back to the place in the highway where she had found them, and liberated them, without notice to plaintiff, who never regained possession of them. The Supreme Court of Michigan, in Ryan *v.* Chown, 125 Northwestern Reporter, 46, held that, as it is the nature of turkeys to wander, defendant's act was not such a return as would relieve her from liability for conversion.

Civil Liability of Prosecuting Attorney for Misconduct in Office.—In the case of Ostmann *v.* Bruere, 124 Southwestern Reporter, 1059, is disclosed a rather novel attempt to maintain an action against a prosecuting attorney who had secured the conviction of plaintiff for obstruction of process. It was alleged, in substance, that defendant willfully and maliciously, and without just cause, abused the powers of his office by filing an information against plaintiff in justice's court, and in the prosecution of the case subjected plaintiff to a fierce, intemperate, browbeating cross-examination, and compelled her to answer questions of a disgusting nature; that by improper methods he procured her conviction in justice's court, and on appeal to the circuit court unduly influenced the minds of the jury, and again caused her conviction and the assessment of fine and costs. Judgment was asked for $500 actual damages, and $1,000 as punitive damages. Demurrer was sustained by the trial court, and the order affirmed by the Kansas City Court of Appeals. The latter court in its opinion says: "This petition is so glaringly bad that it is difficult to regard it seriously. * * * Stripped of adjective epitaphs, the charge of plaintiff is that in the trials of the criminal case defendant browbeat her and assaulted her with an intemperate, vulgar, and unnecessarily severe cross-examination. She should have objected to such reprehensible conduct, and if the court would not sustain her objections, and hold defendant within proper bounds, she should have excepted and brought her exceptions to the Court of Appeals. Everything of which she complains was a matter of exception in that case, and cannot be made the subject of an independent suit."*

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*The general rule is that a prosecuting attorney is a judicial officer, and is not responsible in a civil suit, for a judicial determination, however erroneous it may be, and however malicious the motives which produced it. Griffith *v.* Slinkard, 146 Ind. 117, 44 N. E. 1001; Parker *v.* Huntington, 2 Gray 124.

Nor is he liable in an action of libel for reading the contents of an indictment in open court to the officers thereof, though alleged to be false and malicious. Griffith *v.* Slinkard, 146 Ind. 117, 44 N. E. 1001.

Though some authorities hold he is liable for procuring a conviction where he acts from malicious or corrupt motives. Arnold *v.* Hubble, 38 S. W. 1041, 18 K. L. Rep. 947; Revill *v.* Pettit, 3 Metc. (Ky.) 315.

He is liable for moneys actually received in his official capacity,